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IN THE

SUPREME COURT OF THE UNITED STATES.

..... TERM, 1966.

No. 469

ARCHIE J. LAYTON, ISAAC A. BYRD, JAMES W. BROWN and JOSEPH R. AINLEY, in Behalf of Themselves and a Committee for and in Behalf of All Other Persons of a Class Similarly Situated,
Petitioners,

vs.

SELB MANUFACTURING COMPANY, a Division of Western, Inc., a Corporation, and BLADES MANUFACTURING CORPORATION, a Corporation, and INTERNATIONAL ASSOCIATION OF MACHINISTS DISTRICT NO. 9, a Labor Organization, Appellees,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

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ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

INDEX.

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statement of the Case	2
Reasons for Granting the Writ	4
Conclusion	5

AUTHORITIES.

Cases.

Elgin Ry. Co., etc., v. Burley, 65 S. Ct. 1282 and 66 S. Ct. 86	5
Hartman v. Lauchli, 304 F. 2d 431 (8 C. C. A.)	5
International Ass'n of Machinists, etc., v. Selb & Blades Co., etc., 305 F. 2d 177	3
Thornton v. Carter, 109 F. 2d 316 (8 C. C. A.)	5

Statute and Rules.

28 U. S. C. 1254 (1)	2
Rule 60 (b) (6), F. R. C. P.	2, 3
Rule 71, F. R. C. P.	3

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To the United States Court of Appeals for the Eighth Circuit.

Archie J. Layton, Isaac A. Byrd, James W. Brown and Joseph R. Ainley, in Behalf of Themselves and a Committee for and in Behalf of All Other Persons of a Class Similarly situated, petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled case on May 2, 1966, and affirmed by Order denying Petitioners' petition for rehearing on May 25, 1966.

OPINIONS BELOW.

The opinion of the District Court is reported in 236 Federal Supplement 451.

The opinion of the Eighth Circuit Court of Appeals is reported in 359 F. 2d 715.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 2, 1966. The petitioners were denied rehearing on May 25, 1966. The jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646 (1), 62 Stat. 928 (1), 28 U. S. C., Sec. 1254 (1).

QUESTIONS PRESENTED.

A. Can a labor organization settle by compromise, an arbitration award which has been upheld by a Mandate of a Circuit Court of Appeals when the membership involved has revoked settlement authority and the settlement is not in accord with the Mandate?

B. Can a Circuit Court of Appeals allow its Mandate to be rewritten in a document which substantially deviates from the provisions of the Mandate without first obtaining the Appellate Court's consent?

C. Can a District Court lawfully allow a judgment which has been affirmed by a Mandate of a Court of Appeals to be set aside and the cause of action dismissed by a Stipulation of the nominal parties thereto when one of the nominal parties is a labor organization acting contrary to the instructions of its affected membership by so stipulating and the terms and conditions of the dismissal in the Stipulation document are not disclosed to the Court or the labor organization members involved?

STATEMENT OF THE CASE.

The instant action commenced in the form of a motion by petitioners for an order granting relief to them under the provision of Rule 60 (b) (6), Federal Rules of Civil Procedure (R. 6 to 9). The petitioners are the Chief

Shop Steward and a majority of the elected Shop Stewards formerly in the employ of the respondent Selb Manufacturing Company (hereinafter designated the "company"). They ask for relief under the authority of Rule 60 (b) (6) and they invoke the provisions of Rule 71, F. R. C. P., as their authority to act in this case in behalf of their former fellow employees (R. 8).

The petitioners were employed by the Company during 1960 when a contract grievance arose between the petitioners and the Company. During all of the relevant times the petitioners were exclusively represented for purposes of collective bargaining by a labor organization known as District No. 9, International Association of Machinists (hereinafter designated the "Union"). The contract grievance eventually was taken into an arbitration procedure (S. R. 2 to 6) and the Union prevailed in a landmark arbitration decision. The Company refused to abide by the Arbitrator's decision and the Union filed a suit in the District Court for specific performance of the Award (S. R. 1 to 7).

The District Court affirmed the Union and the Arbitrator. The Company appealed and the Eighth Circuit Court of Appeals affirmed the District Court (305 F. 2d 177).

The Eighth Circuit Court of Appeals Mandate was lodged on Aug. 30, 1962 (R. 3). On September 24, 1962, the Union membership held a meeting in order to discuss their status in the litigation. Following that meeting a telegram was sent on September 24th, 1962, by A. J. Layton, Chief Steward, in behalf of all of the Grievants, to the Union requesting the settlement negotiations to "STOP" until the membership could re-schedule a meeting to discuss the case (R. 11). This telegram was received in due course by Union Officers (R. 34). However, no such meeting was ever scheduled and the Union entered into an unauthorized settlement of the litigation with the Com-

pany on October 11th, 1962 (R. 10). Also on October 11th, 1962, the Company and Union Officials executed two documents. One document is titled a "Stipulation" and was filed with the District Court on October 11th, 1962 (R. 10). The other document signed on October 11th, 1962 is titled "Agreement" (S. R. 35, 36, 37, 38 and 39). The document titled "Agreement" was NEVER filed with the district court. It was NEVER disclosed to the district court. It was NEVER exhibited to or disclosed to the members of the Union (R. 67, 70, 72). The "Agreement" document deviates in every respect from the Mandate of the Appellate Court.

On March 30th, 1963, the Union finally called a meeting of the members (S. R. 39 to 57), to seek approval of the settlement proposition (five months and three weeks AFTER the Union had stipulated with the Company and set aside the judgment and dismissed the litigation without the knowledge or consent of the members). In the course of this meeting the membership consented to a settlement totalling $125,000.00 (S. R. 57). The members were still NOT told of the "Agreement" made between the Company and the Union (R. 67, 70, 72). In June, 1963, checks in varying amounts were mailed to the majority of the Grievants, endorsed and negotiated (S. R. 58 to 61). Each check contained a release above the endorsement line (S. R. 61). The petitioners' motion for relief under the provisions of Rule 60 (b) (6) was filed twenty months afterward (R. 6).

REASONS FOR GRANTING THE WRIT.

Petitioners have only the power of this Court left to them to compel the District Court below to re-examine and re-evaluate the grounds and procedural errors which led up to the loss of their valuable rights as spelled out by the Mandate of the Court of Appeals. Petitioners re-

adopt and re-urge the arguments set out in their Petition for Re-Hearing in the Court of Appeals below as the reasons why this Court must grant its curative Writ.

Compelling the District Court below to thoroughly re-examine the setting aside of the Mandate as petitioners prayed in their Rule 60 motion (R. 8), will avoid prolonged and needless litigation to test the validity of the dismissal and releases under the teaching of Elgin J. & E. Ry. Co. v. Burley, 65 S. Ct. 1282 and 66 S. Ct. 86. Compelling compliance with the rigid requirements of the teachings of the Eighth Circuit Court of Appeals in their cases of Hartman v. Lauchli, 304 F. 2d 431 and Thornton v. Carter, 109 F. 2d 316, will forever prevent the type of miscarriage of justice so rampant in this record.

CONCLUSION.

For the foregoing reasons, the Writ of Certiorari should be granted.

Respectfully submitted,

JEROME J. DUFF,
Attorney for Petitioners,
Suite 1155—818 Olive Street,
St. Louis, Missouri 63101,
314—MAin 1-3833.

Affidavit of Service.

State of Missouri,
City of St. Louis.

I, Jerome J. Duff, counsel for the Petitioners herein, and an attorney of record for the Petitioners in the Courts below, depose that on the .. day of August, 1966, I served four copies of the foregoing Petition for Writ of Certiorari on the Respondents, as required by Rule 33, Para-

graph 1, by personally delivering said copies hereof to Mr. Bernard Barken, Attorney of Record for Respondent Selb-Blades, etc., 611 Olive Street, St. Louis, Missouri, and Messrs. Bartley, Siegel & Bartley, Attorneys for Respondent Union, 130 South Bemiston Avenue, Clayton, Missouri 63105.

.....

Jerome J. Duff.

Subscribed and sworn to before me at St. Louis, Missouri, on this .. day of August, 1966.

.....

Notary Public.

My Commission Expires: .....